SUPREME COURT, U. S.

JUN 18 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 207

THE MARYLAND PETITION COMMITTEE, et al,
Petitioners,

v.

LYNDON B. JOHNSON, et al,
Respondent.

The Petition for a Writ of Certiorari to the United States Supreme Court

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. .....

IN THE MATTER OF THE

MARYLAND PETITION COMMITTEE, a membership corporation, P. O. Box 1631, Annapolis, Maryland 21400

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WILLIAM M. BRAILSFORD, Individually and Taxpayer and Father and Next Friend of EDWARD B. and KATHRYN ANN BRAILSFORD, Infants, 1913 Willow Spring Road, Baltimore, Maryland 21222

ALICE J. BARKSDALE, Individually and Mother and Next Friend of CHRISTINE G. and MARGO C. BARKSDALE, Infants, Lothian R.R., Maryland 20820

Petitioners

vs.

LYNDON B. JOHNSON, President of the United States of America

and

HUBERT H. HUMPHREY, Vice-President of the United States of America and President of the United States Senate

and

JOHN W. McCORMACK, Speaker of the House of Representatives

and

ACTING ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA

and

As Representatives of the United States of America

Respondents

The Petition for a Writ of Certiorari to the United States Supreme Court

The Maryland Petition Committee, et al, in a Class Suit Petition for a Writ of Certiorari to review the Judgment

of the United States Circuit Court of Appeals for the Fourth Circuit entered in the case on March 21, 1968.

OPINIONS

The opinion of the Circuit Court of Appeals is not yet reported. It is merely a PER CURIAM, as follows:

> "Upon consideration of appellees' motion to affirm the judgment of the District Court, 265 F. Supp. 823 (D.Md.1967), it is
>
> "ORDERED by the Court that appellees' motion to affirm is granted and that the judgment of the District Court now on appeal is affirmed."

QUESTIONS PRESENTED

1. Whether the Fourteenth Amendment was constitutionally proposed or ratified and for a construction of Article V in respect thereto and general enlightenment?

2. Whether the Petitioners are competent to bring this action?

3. Whether there is a justiciable issue?

4. Whether Laches can be pleaded when the construction of the Constitution (and Acts of the Congress) are involved?

5. And incidentally whether the President may be made a party to such actions?

6. As to the extent of the Court's power under the Prayer for General Relief?

7. As to the scope and effect of the General Relief Prayer?

STATEMENT OF THE CASE

The Petitioners, The Maryland Petition Committee, et al, instituted this action in the United States District Court at Baltimore, Maryland, to enjoin the enforcement of the Fourteenth Amendment (and all laws enacted in pursuance thereof), as it was never constitutionally proposed or ratified in accordance with (said) Article V. The District Court dismissed the Petition on the grounds that the Petitioners (a) were not entitled to relief as they had no standing as taxpayers, citizens, voters and interested parents of school children, as shown in the cases of *Frothingham* vs. *Mellon,* 262 U.S. 447 and such as *Fairchild* vs. *Hughes,* 258 U.S. 130, and (b) implied that it was a political matter and (c) because the Courts will not go back of the public action of the officers of the Congress and President, and (d) implied that the President was sacrosanct in such matters, and (e) implied that Laches applied or had a substantial effect on the matter.

As to going behind the back of the official act of Congress, the Court in *Field* vs. *Clark,* 143 U.S. 302, dealing with a matter of regular legislation, and recognizing the courtesy due the Congress, ignored the obligation due to the Constitution and held that they would not enter the thicket of legislative procedure to determine just what was enacted. As to the *instant case,* we oppose and contest that view, as the Constitution is explicit as to what is required, and the Record is clear and must be recognized.

The case of *Coleman* vs. *Miller,* 307 U.S. 433, was somewhat of a thicket matter, but the *Congressional Globe* is clear and available, as see said Exhibit No. 2.

The basic question is (a) whether *vel non* the Amendment was proposed by the House of Representatives, as

the vote for it was only 120 out of a House of 184 members of this (Rump) Congress. This raises the vital question as to whether Article V required two-thirds of the *elected* members or merely two-thirds of those *present.* It is here contended that two-thirds of the "elected" members is, and was, clearly required.

The word "present" will be found when the majority for the action of the Senate on Treaties was provided for.

Furthermore, that word was subjoined to the one-fifth required for ordering the yea or nay vote, thus showing that the word "present" was a well-known word to them.

The Fourteenth Amendment is an abortion, having been brought about by force and not by natural birth.

The *facts* of the case are virtually not in dispute, and as to the law, we are dealing with a *construction* of *Article V* and not *Article I, Section 7.* This requires a *fresh* consideration of the matter, and particularly in regard to the extent that *the Congress must show by its Records or otherwise* that it has *complied with said Article V* and it cannot use *said Section 7* to do so, as it deals solely with matters of regular legislation.

This area of operation has been recognized to be, and is clearly outside of Section 7 of Article I, and is *not legislative,* as to which see *Hollingsworth vs. Virginia,* 3 Dall 378, and the discussion of the *Fifteenth Amendment* in the Congress as reported in the *Congressional Globe of 1869,* page 1563, in regard to the need for the President's signature; hence, *Impeachments* are handled as by a court proceeding and the *Treaties* by the Senate alone as extracurricular and extra legislative work. However, the Courts have not thus checked the Constitution in dealing with Amendments, to determine the majority

required in proposing Amendments, as obviously required by Article V.

JURISDICTION

The Judgment of the Court of Appeals was entered on the 21st day of March, 1968, supra, sustaining a motion of Appellants to dismiss on the record. 28 U.S.C. 2101 and Rule 23.

I

The Fourteenth Amendment was neither constitutionally proposed nor ratified.

The Constitution Article V states that:

(a) "The Congress, when two-thirds of both Houses deem it necessary, shall propose Amendments," which

(b) "shall be valid to all intents and purposes" when "ratified by . . . three-fourths of the several States . . ."

A. And as to Proposals: Petitioner's Exhibit No. 2 shows a House Proposal vote of 120 to a House of 184 members and therefore the Proposal did not receive two-thirds of the House. The House acted on two-thirds *present*, and this sustains the allegations of the Petitioners that the Proposal was and is unconstitutional.

This is the *first time,* as far as we know, that the Court has ever been called upon to make *a clear and direct construction of Article V on the ground above set forth,* the *basic* and the *first ground* to be considered in determining the amendment's validity; therefore, the Cases so far considered, do not need to be considered here, as they went off on side issues and particular facts without considering this point.

This leads us to the question of the actual and natural and literal meaning of that Article, when so considered, and it will be found that it means two-thirds of the "elected members", as shown by the application of the maxim *Expressio Unius est exclusio alterius,* and we find confirmation of this normal construction was used by retired Justice Whittaker in a speech made in Washington, February 14, 1967 before the American Enterprise Institute, as he used the word "elected" members, not merely those *present* when referring to Constitutional amendment.

There was a clear obligation on the part of the House to make *clear* on the *available record that a two-thirds majority existed,* and not to leave a loophole for chicanery or other fraud, the necessity of which is quite clear, we contend, and particularly in connection with this Amendment. The vote, now, is clear from the *Congressional Globe of 1866.* Exhibit No. 2.

The President, *as a check,* was and is in no way involved in the *Impeachment* and *Treaty* provisions, so the obligation on the House is *therefore stronger.* Checks and balances were provided for to prevent abuses of power. We therefore, are calling upon the Court to give the legal meaning of Article V.

Irrespective of form, this is essentially and substantially a Class Suit, but in view of the decision in the *Flast* vs. *Cohen Case,* this is not now deemed of importance here, though it is not *waived* if it proves essential and is pressed.

B. The ratification of the Amendment was not done constitutionally. *First,* at least seven (7) southern states had been recognized and accepted as *de jure* states, as their vote was necessary to the Ratification of the

Thirteenth Amendment. See Secretary Seward's Proclamation, a Public Document, and as to which there can be no dispute. (Pet. Exhibit No. 1)

Yet, when they voted to reject the Fourteenth Amendment, their rejecting vote was ignored, and a Demand was made by the *Reconstruction Act of March 2, 1867,* that they and the others, ratify the Amendment before they would be accepted, and to coerce a reversal, the Congress placed the South under a Military Government, and this Act got the Supreme Court itself, in the *McCardle Case,* 7 Wall. 506, in an unenviable position. See Justice Grier's Statement. The story of this case is too well known to require further comment.

In view of the above, it is inconceivable that the Fourteenth Amendment came to be considered or accepted as a Constitutionally sound instrument and to be part of the Constitution, and its virus has about wrecked our once dual form of Government, and, together with the *Wickard* vs. *Filburn case,* 317 U. S. 111, and the general welfare cases, have inoculated the bulk of the States to a point where they act like a cripple, using Uncle Sam as a crutch.

In *Rhode Island* vs. *Palmer,* 253 U. S. 350, the question was not analyzed but was disposed of by *ipsa dixit* by the Court, which brought a comment by a member of the Court, Justice White. *Our contention is that it was never checked against the whole Constitution, the basic rule of construction.*

The same as to the *Missouri P. R. Co. of Kansas Case,* 248 U. S. 276. Until this is done, it is still an open question, which we are now presenting to the Court.

In some of the cases pertinent hereto, the Court did discuss the question of jurisdiction to decide the question,

and it is the decision therein that we now contest, as it is the Court's business to tell all the world, when called upon, *what Article V means in our situation,* else it solely rests in the hands of politicians, to avoid which the Supreme Court was at least partially provided.

The question of the validity was raised in *U. S.* vs. *Sprague*, 282 U. S. 716, and the Court disposed of it by referring to the Prohibition case, which also ignored our Point.

II

As to the capacity of the petitioners to sue.

The breadth and depth of the Constitution involves individual as well as collective and all other rights. If one is charged with crime, he is permitted to wrap around himself, heinous as the crime may be, the sacred folds of the Constitution, and yet, it is here concluded that these taxpayers, etc., who from deep feelings on such matters as the school, reapportionment and other vital public problems of public knowledge, interest, and concern, which are supported by this obviously unconstitutional amendment, which is, therefore, a mere parasitic growth on the Constitution, and yet we legal arborculturists are so far fenced off from this parasitic attachment to the trunk of *our* Constitutional tree.

The Courts, seemingly, at least, instead of permitting vigilance in the protection and defense of the Constitution, are injecting impediments and have put limitations on those who are, at least in their minds and deep feelings, defending the Constitution, as in this case. We contend that the *Flast* case supports Petitioners' Right and Standing to bring this case to Court, as we are striking at the *basis* of the Federal legislation that is depriving them of

their right of choice in their local government. This is not a *political question,* but a *question of power* under Article V.

The local matter involves a *deep sense of feeling* and *social welfare,* and without feelings a Person is little better than a *Perambulating Hunk of Flesh.* The *Right of Choice* is one of the most important Personal Rights of man. A general law involving equal rights does not deprive either side of his fundamental right of choice. The rights of both are merely competitors in the Marketplace of Justice Holmes. The Founding Fathers recognized this, as to local matters, by this statement in *The Federalist,* Article 60, by *Hamilton*:

> "There is *sufficient diversity* in the state of property, in the genius, *manners, and habits of the people of the different parts of the Union,* to occasion a *material diversity of disposition* in their *representatives towards the different ranks and conditions of society.* And though an intimate intercourse under the same government will promote a gradual *assimilation in some of these respects,* yet there are causes, *as well physical* as moral, which may, in a greater or less degree, *permanently* nourish different propensities and inclinations in this respect," so, a matter of choice was recognized. (Emphasis supplied).

and by *Madison,* in Article 45, that:

> "The powers delegated by the proposed constitution to the *federal* government are *few and defined.*" (sic) "Those which are to remain in the State governments are *numerous and indefinite.* The former will be exercised on *external objects,* as war, peace, negotiation, and foreign commerce;*** The powers reserved to the States *will extend to all the*

objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the *internal order,* improvement, and prosperity of the State." (Emphasis supplied).

The Fourteenth Amendment has been used to nullify the effort to protect the States.

Equal Protection of the Laws does not mean that each Person is entitled to have or enjoy any specific thing or any place with another Person, as pointed out by the great Chief Justice Shaw in *Roberts* vs. *City of Boston,* 59 Mass. 1198 (1849), a case brought by the powerful integrationist Senator Sumner.

Equal Protection of the Laws has developed a "momentum" of "self-extension" by a "creeping" process, *Int. Salt Co.* vs. *U. S.,* 322 U.S. 392, and *U. S.* vs. *Rabinowitz,* 339 U. S. 408, which has resulted in a virtual absorption of the States in many of their most important aspects—and these methods have not yet been abandoned, even though in some respects they have been modified.

The Fourteenth Amendment was never intended to do more than protect *Civil Rights* as commonly understood. "Civil Rights" does not include such matters as schools, as shown by the Debates on the Fourteenth Amendment and the History of the States. The two *Federalist* quotations are of supporting character—so, the Petitioners conclude, with all respect and permissible emphasis, that they come within both the spirit and the letter of the *Flast* Case. These Petitioners, aside from the States' interest, are asserting their *own interests* as they *existed at the time they were stricken down in such as the School Cases.* They are asserting *specific rights* growing out of *personal injury* to them, and their *feeling and right of choice*—aside from the forceful taking of the States'

rights as a political institution which reacts on them, and prevents them from maintaining the *Status quo.*

III

Whether the question is a political or a justiciable question.

The question here involves indisputably and ineradicably a matter for the Courts, *namely,* whether the *procedure* required by Article V was followed. This in no way involves the *substance* of the Amendment, and it is the *substance alone* that is political, which is also, we submit, indisputable by any intelligent and informed and disinterested person; so, *if the Act of the House is laid up against Article V,* one or the other *falls,* and we answer by the language of *Mr. Charles Warren,* in his History of the Supreme Court, the Constitution is still the law, and not the decisions, and it is not overridden by *Coleman* vs. *Miller,* supra, which remarked that the *political departments* had accepted it. The Constitution, as here presented, is not to be brushed off that easily—by any blinking or purblinding process. *McCardle* merely acknowledged the Constitutional power of the Congress to restrict the Court's appellate jurisdiction. In the case of *Georgia* vs. *Stanton* the Court did refuse to strike down the Reconstruction Act on the ground that the issue was political.

Without dealing further with the irrelevant cases, we stand on our statement that this question involves *solely* the matter of *procedure,* which is in no way to be *contaminated by the Congress that was apparently reeking with politics,* which is too well known to require citations. Its politics could in no way infect the *procedure,* except by the Court's failure to function in this legal field as in connection with the *McCardle* and the *President* cases;

and we therefore urge the Court to deal with this matter in *its clear, legal and jurisdictional stance.* This not being a matter for deference to coordinate bodies, in proper matters we have no objection, but we do object here as it involves a *clear case* of constitutional construction.

IV

Laches is not pleadable or interposable by the Courts.

In several cases a suggestion of this character has been made. See *Leser* vs. *Garnett,* 258 U. S. 130, and *United States* vs. *Association of Citizens Councils,* W.D. La., 187 F. Supp. 846, 848 (1960).

Charles Warren, Esq., in his *The Supreme Court in United States History,* has answered that interjection thus: "However the Court may interpret the provisions of the Constitution, it is still the Constitution that is the law and not the decisions of the Court". The Constitution is, in effect, displaced by Interpretation, but like Banquo's Ghost it will appear again to shake out the kinks of the Court law. We have repeatedly seen of later years the attempt of the Courts to shake out their own kinks by further compounding public problems and confusing the public mind. This fact has not disturbed the courts, as we see from such as the school, reapportionment and other cases where the Fourteenth Amendment and the Commerce clause are used as Constitutional supports.

We, without further ado, contend that the Plea of Laches is untenable, and should not help to side-step the Constitution or to interfere with the Court's duty, along with the President, *et al,* to "preserve, protect and defend the Constitution." That is a primary function of all Public Officials and Courts, so, therefore, we contend that the Court must give controlling consideration to the Con-

stitution and should not allow the fog of politics and disorganized society to obscure its vision from Mt. Olympus. *Time* does not cure a wrong against the Constitution, as it may in private litigation, as Mr. Warren and Messrs. Cooley and Story have agreed.

V

There is no general immunity granted the President in such cases.

There is no general Constitutional immunity of the President and he is therefore subject to the power of the body designed to see that the Constitution operates on all offices and officers alike, and that all are kept within the bounds thereof—however unenviable the job at times may be. Respect, of course, is due to all Branches of the Government, but not surrender to them.

We have noted that the Court has at times considered and handled that power with questionable delicacy, notably in the Civil War President's cases. The Court should make its interpretations and decisions according to its best judgment and let the chips fall where they may, as in the Civil War *Merryman Case,* or let the blood be on whose head it falls.

We do not think that thickets or other impediments should be interposed to protect those who *pretend* to act under Constitutional authority, even though we know the policy of the Court is to avoid such a question if *possible*—and the second possibility is subject to considerable expansion. Note the *Per Curiam* in case *Neese* vs. *So. Ry.*, 350 U. S. 77, 78, among others. Neither should a lack of diligence on the part of, or a connivance thereat by the public, be a reason for using myopia, blind-spotting or by-passing the Constitution—until, as now seen, the sub-

stance of our form of Government has been practically destroyed, NOTE, such as the *General Welfare and Wickard* vs. *Filburn cases,* 317 U. S. 111, and such as the recent *so-called Civil Rights* and *Commerce Clause* cases.

VI

As to the scope and effect of the general relief prayer.

Your Petitioners ask for consideration of the General Relief Prayer. That the true meaning of Article V is the most important item here involved; and will be in the future, when proposals and ratifications are involved, as has been above shown; therefore, your Petitioners are pressing for a construction thereof under this heading, as we have *hereinabove emphasized,* that this is the *first time* that the Court has had presented to it the Amendment under the *Four Corner rule of construction viewpoint* and the Maxim to be used as a guide in connection therewith.

We have seen the truth, in this connection, of the old apothegms that once an error is made it grows in geometrical progression, as widely believed here, and at least, therefore, these phases of Article V should be reconsidered and the Constitutional atmosphere, now murky, be cleared, and let the chips fall where they may, as did Chief Justice Taney in the *Merryman* case, and as future guidance.

It is high time that the Amendment is examined in its true perspective. The question is now here in its true perspective.

CONCLUSION

The matter and facts set forth in this Petition are matters of Public Record of notice and most is of general knowledge to the legal and kindred professions. There is to be expected no substantial dispute, so therefore the case can be disposed of as the law applicable in premises;

Therefore, we conclude that the Court should

1. Grant the Prayer of the Petitioners in their personal interest and in the interest of good Constitutional Government, and

2. In any circumstance, interpret Article V of the Constitution as a guide for the future, even though Laches may be applied to the past, and

3. Thus give the Constitution the respect to which it is entitled.

Respectfully submitted,

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